IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC.CIVIL APPLICATION NO.100 OF 2004

Manish Pramod Shirkande ...Applicant
vs.
Pramod Hiraman Shirkande ...Respondent

Mr.Ashok G. Toraskar for the Applicant
Mr.M.S.Lad for the Respondent.

CORAM: A.S.OKA,J.
DATE : APRIL 26,2005.

P.C.:

1. Heard Advocates for the parties. The Applicant is the wife and the Respondent is the husband. The Applicant-wife has filed a Petition under Section 125 of Code of Criminal Procedure,1973 for herself and on behalf of her minor daughter against the Respondent for maintenance. The said Application is pending in the Court of learned Judicial Magistrate First Class ,Niphad. The Respondent-husband has filed a Petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 in the Family court at Mumbai. The prayer made in this Application is for transfer of the Petition filed by the Respondent to the Court at Civil Judge (S.D.) at Niphad.

2. The learned Advocate for the Applicant has invited my attention to the averments made in the Application. He submitted that the Applicant's daughter is suffering from heart ailment and she requires constant medical treatment at Niphad. Considering the fact that the Applicant is residing at Niphad along with her aged parents and considering the fact

that the minor daughter is suffering from heart ailment, it is impossible for her to attend the Family Court at Mumbai. He submitted that though by filing an Affidavit in reply, the Respondent has offered residential tenement to the Applicant at Mumbai and though he has stated he is prepared to pay a reasonable amount of maintenance and is ready to pay for education and treatment of minor daughter, it is not possible for the Applicant-wife to shift to Mumbai. He has placed reliance on Affidavit in rejoinder. In the said Affidavit the Applicant has stated that the Respondent has constantly ill-treated the her and in fact the Respondent used to lock her in a room. The learned Counsel for the Respondent has invited my attention to various averments made in the Affidavit-in-reply filed by the Respondent. He also relied upon the Affidavit dated 2nd March 2005 filed by the Respondent and stated that considering the offer made by the Respondent to provide accommodation to the Applicant at Mumbai, no case is made out for transfer.

3. I have considered the rival submissions. The grounds pleaded in the Application by the Applicant read thus :

i) That both the Applicant and the Respondent find inconvenience and hardship to attend the litigation pending before the Family Court, mumbai where the Respondent-husband has filed Petition No.A-1062 of 2004 for restitution of conjugal rights and

Applicant-wife has filed the Application for maintenance against the husband u/s 125 of Cr.P.C. at J.M.F.C.,Niphad.

ii) That the Applicant-wife stays at Niphad with her parents and parents are old aged thus no one from her family would go with her to attend the Petition at Family court Mumbai.

iii) That the Applicant has a daughter by name "Priyanka" aged about 4 1/2 years and therefore, practically it is difficult for the applicant to come to Mumbai and attend the Family Court, Mumbai. Daughter Priyanka is studying in Vainateya Shishu Vihar, Niphad and if the Petition is not transferred to Niphad, education of the daughter would be disturbed.

iv) The Applicant's daughter-Priyana is suffering from heart problem and she is required constant treatment at Niphad as well as Nashik and the Applicant-wife is required to look after the daughter and therefore, the Applicant is unable to attend the Family court Mumbai at Bandra.

4. The Respondent has filed Affidavit-in-reply. The Respondent has stated that he has already enrolled the minor daughter in a school at Mulund, Mumbai and has paid necessary fees to the school. He pointed out that the daughter was earlier treated at Mulund and in fact better medical treatment is available at Mumbai than at Niphad. In the Affidavit dated

2nd March 2005 the Respondent has stated that,

(a) He has taken a room premises on leave and licence basis at Mulund, Mumbai for the residence of the Applicant and minor daughter.

(b) He will bear all expenses of education and medical treatment of the minor daughter.

(c) He is prepared to pay Rs.1000/- for expenses.

It is stated that in view of the aforesaid statements nothing will survive in the maintenance application which is filed in the Court at Niphad.

5. In the Affidavit-in-rejoinder filed by the Applicant, the Applicant has not accepted the offer made by the Respondent-Husband. In paragraph Nos.10 and 11 of the rejoinder she has merely stated that there is a danger to her life and her stay in Mumbai will not be safe. She has referred to alleged ill-treatment given by the Respondent to her.

6. The Respondent has made a statement on oath that he is prepared to pay maintenance of Rs.1000/- per month to the Applicant and he is ready to bear entire expenditure on the education of the minor daughter and he is ready to take

responsibility of providing medical treatment to the minor daughter. He has stated that he has secured a residential tenement where he can accommodate the Applicant and the minor daughter.

7. It appears to me that the fair suggestion given by the Respondent is not accepted by the Applicant. It cannot be disputed that for heart ailment, better medical treatment is available at Mumbai rather than at Niphad. If the entire expenditure on education and medical treatment of the minor daughter is to be borne by the Respondent, the Applicant cannot have any grievance. The Respondent has offered to provide a residential tenement to the Applicant at Mulund, Mumbai. Therefore, in my view, no case is made out for passing the order of transfer.

8. A reliance is also placed by the learned Advocate for the Applicant on various Judgments of the Apex Court reported in A.I.R. 1990 Karnataka page No.273 (Smt.Jayadevi Vs. Basavaraj), A.I.R. 1987 Rajasthan page No.79 (Smt.Sunita Bali Vs. Ashok Bali), A.I.R. 1988 Punjab And Haryana page no.75 (Ved Prakash Garg Vs. Smt.Seema), A.I.R. 1988 Punjab & Haryana page no.77 (Raikot Co-operative Marketing-cum-Processing Society Ltd. Vs.State of Punjab & Ors.), A.I.R. 1990 Madras page No.330 (K.R.Srinathi Vs. Raamakrishnan), A.I.R. 1990 Madras page No.333 (Mahalingam Vs. Kannayyan and another). In view of the offer of the

Respondent which is recorded above, the aforesaid decisions will not help the Applicant.

9. The only ground pleaded in this Application is that considering the fact that the Applicant is residing at Niphad, it will be impossible for her to attend the proceeding at Mumbai. In view of the fair stand taken by the Respondent, the grounds for transfer pleaded by the Applicant do not survive. It is not the case of the Respondent that he will be staying with the Applicant. In fact, the Respondent has offered to make available separate residential accommodation to the Applicant at Mulund, Mumbai. Therefore, there is no substance in the apprehension of the Applicant that her stay in Mumbai will not be safe. Hence, Application is rejected.
No costs.

10. Though prayer for transfer is rejected, it is made clear that in case the applicant does not accept the offer given by the Respondent, it will be open for the Applicant to make application before the Family Court, Mumbai for grant of expenses on account of travelling charges and the same shall be considered by the Court without being influenced by the said offer given by the Respondent to provide a residential accommodation at Mumbai.

JUDGE.